

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YU-HWA PA,

No. C-04-1042 MMC

Plaintiff,

v.

**ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT; DISMISSING
STATE LAW CLAIMS WITHOUT
PREJUDICE**

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT, LARRY DOYLE,

Defendants

Before the Court is the motion for partial summary judgment, filed May 13, 2005 by defendants San Francisco Bay Area Rapid Transit District ("BART") and Larry Doyle ("Doyle"), with respect to certain claims in plaintiff Yu-Hwa Pa's complaint and for summary judgment on BART's counterclaim against plaintiff, pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff has filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the papers, VACATES the hearing scheduled for June 17, 2005, and rules as follows.

BACKGROUND¹

On May 9, 2001, plaintiff and BART entered into a contract for the construction of

¹The following facts are undisputed or, if disputed, stated in the light most favorable to plaintiff.

1 improvements to a public plaza area located at BART's 16th Street/Mission Station, for the
2 amount of \$1,747,000. (See Pa Decl., filed May 27, 2005, ¶ 3.) Among plaintiff's
3 obligations under the contract was to provide BART with "submittals with respect to the
4 metal guardrail system that was to be installed," (see Doyle Decl., filed May 13, 2005,
5 ¶ 9), including "calculations for the railings signed by a California registered Civil or
6 Structural Engineer," (see id. Ex. 7).

7 Plaintiff alleges he intended to prepare the above-referenced submittals required
8 under the contract himself, (see Compl. ¶ 22), but that "Doyle, in his capacity as BART
9 project manager in administering the Contract, and BART coerced plaintiff to subcontract"
10 such work to a third party, Creating Cutting Service ("CCS"), (see Compl. ¶ 23); plaintiff
11 further alleges defendants did so because of defendants' animus toward plaintiff's "race,
12 ethnicity and/or country of origin," (see Compl. ¶ 24), and in violation of plaintiff's "freedom
13 to contract," (see Compl. ¶ 25).² Plaintiff subsequently entered into a subcontracting
14 agreement with CCS on October 15, 2001. (See Pa Decl. ¶ 6.)

15 During the course of plaintiff's work on the construction project, the parties entered
16 into various "Change Orders." (See Pa Decl. ¶ 15.) In Change Order 14, executed by
17 BART on August 22, 2002 and by plaintiff on September 16, 2002, the parties agreed that
18 BART would extend the time for plaintiff to complete all required work, and plaintiff agreed
19 to release "any and all claims and potential claims for the Contract period prior to and
20 including August 2, 2002." (See Doyle Decl. Ex. 10.)

21 Plaintiff completed his work on May 9, 2003, (see Pa Decl. ¶ 16), at which time
22 BART was holding "\$183,807.61 in contract retention plus an additional \$56,636.13 in
23 unpaid progress payments," (see id. ¶ 19). Although plaintiff demanded that BART pay
24 plaintiff the retention and unpaid progress amounts, BART has not paid plaintiff the

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26 ²Plaintiff has failed to offer any evidence to support these allegations. The most
27 glaring omission is plaintiff's failure to offer evidence that he was qualified to perform the
28 subcontracted work, and, in particular, plaintiff has not contested defendants' evidence that
plaintiff is not a California registered civil or structural engineer. (See Doyle Decl. ¶¶ 9-10.)
In light of the Court's finding with respect to the release provision, discussed infra, however,
the Court need not further address the merits of plaintiff's federal claim.

1 retention. (See id.)³

2 DISCUSSION

3 In his complaint, plaintiff alleges two claims under state law and one federal claim,
4 specifically, a violation of 42 U.S.C. § 1983. Plaintiff's federal claim is predicated on the
5 theory that defendants, by "coercing" plaintiff to enter into a subcontracting agreement,
6 violated plaintiff's federal civil rights. (See Compl. ¶¶ 23-25.)

7 Defendants argue that plaintiff's § 1983 claim is barred by the release provision in
8 Change Order 14, under which provision, as noted, plaintiff released "any and all claims
9 and potential claims for the Contract period prior to and including August 2, 2002." (See
10 Doyle Decl. Ex. 10, second page.)⁴ Plaintiff, relying on the provisions of § 1542 of the
11 California Civil Code, asserts he did not realize, at the time he signed the release, that he
12 had a claim under § 1983 arising from his having been "coerced to subcontract" with CCS.
13 (See Pl.'s Opp., filed May 27, 2005, at 6:21-23, 9:1-12.) Section 1542 provides that a
14 "general release does not extend to claims which the creditor does not know or suspect to
15 exist in his or her favor at the time of executing the release." See Cal. Civ. Code § 1542.
16 Assuming, arguendo, plaintiff could show that he did "not know or suspect" he had a
17 § 1983 claim as of the date he executed Change Order 14, plaintiff nonetheless cannot rely
18 on § 1542, as plaintiff expressly waived the provisions set forth in § 1542 when he signed
19 Change Order 14. (See Doyle Decl. Ex. 10, second page.)

20 Plaintiff also argues that Change Order 14 does not implicate his § 1983 claim
21 because the release provision therein does not specifically refer to civil rights claims. The
22 provision, however, is not ambiguous with respect to the type of claims being released,
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25 ³BART contends that plaintiff did not complete the project on time and,
26 consequently, owes BART the sum of \$385,500, less the retention of \$183,807, for a total
27 of \$201,692, pursuant to a liquidated damages provision in the parties' construction
contract. (See Doyle Decl. ¶ 15.)

28 ⁴It is undisputed that plaintiff entered into an agreement with the subcontractor in
question on October 15, 2001, i.e., prior to August 2, 2002.

1 because it refers to “any and all claims and potential claims.”⁵ (See id.) Civil rights claims
 2 falling within the scope of an “unambiguous” general release are waived by the release.
 3 See Botefur v. City of Eagle Point, 7 F. 3d 152, 157 (9th Cir. 1993) (holding, where
 4 employee entered into “unambiguous” agreement releasing employer from liability for “any
 5 and all claims,” employee’s § 1983 claim was barred because he “exchanged his rights
 6 under § 1983 for his contractual rights under the agreement”).

7 Accordingly, defendants are entitled to summary judgment on plaintiff’s § 1983
 8 claim.

9 The remaining claims in the instant action are plaintiff’s state law claims and BART’s
 10 counterclaim alleging a state law claim. The Court’s jurisdiction over the state law claims is
 11 supplemental in nature. A district court may decline to exercise supplemental jurisdiction
 12 where “the district court has dismissed all claims over which it has original jurisdiction.”
 13 See 28 U.S.C. § 1367(c)(3). Where, as here, a district court has granted summary
 14 judgment on the federal claim alleged, the district court, pursuant to § 1367(c)(3), may
 15 properly decline to exercise supplemental jurisdiction over remaining state law claims. See
 16 Bryant v. Adventist Health System/West, 289 F. 3d 1162, 1169 (9th Cir. 2002).

17 Accordingly, the Court will decline to exercise jurisdiction over the remaining state
 18 law claims.⁶

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 25 ⁵Plaintiff does not argue that Change Order 14, either in whole or in part, is
 26 otherwise unenforceable. Indeed, plaintiff relies on certain provisions in Change Order 14
 27 to support his state law claims and/or to defend against BART’s counterclaim for breach of
 contract. (See, e.g., Pl.’s Opp., filed May 27, 2005, at 4:14, 4:27 - 5:1.)

28 ⁶In light of this finding, the Court does not consider whether BART is entitled to
 summary judgment on its counterclaim.

CONCLUSION

For the reasons discussed above, defendants' motion for partial summary judgment is hereby GRANTED in part, as follows:

1. Defendants are entitled to summary judgment on plaintiff's § 1983 claim.
2. Plaintiff's state law claims and defendant BART's counterclaim are DISMISSED, without prejudice.

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: June 15, 2005

/s/ Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge